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of termination of the lease for nonpayment of rent, a tender of such rent after the time fixed by the notice for delivery of possession was too late.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 112.]

3. Landlord and Tenant (§ 108 (1)*)—Contract Provisions as to Termination of Lease Held Controlling.—Where a lease authorized lessor, if the rent was in arrears and unpaid, to terminate at the expiration of 10 days from time of giving notice, neither the common-law rules as to procedure to terminate a lease for non-payment of rent nor the statute on the subject had any application.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 112.]

Error to Law and Chancery Court of City of Roanoke.

Action by T. E. B. Hartsook against Jabbour Bros. A verdict for defendants was set aside, judgment rendered for plaintiff, and defendants bring error. Affirmed.

A. B. Hunt, of Roanoke, for plaintiffs in error.

Woods, Chitwood, Cox & Rogers, and *Jackson & Henson*, all of Roanoke, for defendant in error.

POWERS et al. v. HOWARD et al.

Sept. 22, 1921.

[108 S. E. 687.]

1. Equity (§ 446*)—Bill of Review Lies as to Error of Law Apparent on the Record.—A bill of review does not lie to review errors in the determination of facts, but if error of law be apparent from an inspection of the record in a cause, and a final decree has been entered, a proper case is *prima facie* presented.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 383.]

2. Equity (§ 446*)—Admission of Deposition of Incompetent Witness Held Apparent on Record.—A bill of review will lie as to error in admitting the deposition of an incompetent witness, where the decree expressly mentioned the deposition and the exception thereto; such matter thus appearing upon the record.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 383.]

3. Witnesses (§ 146*)—Husband of Party to Action Held Incompetent.—In a suit by an administrator to enforce liens against a husband and wife, the husband was incompetent to testify as to whether the wife was liable as surety only, in view of Code 1904, § 3346a, making the consort of a party to such a proceeding an incompetent witness.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 914.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

4. Equity (§ 460*)—Bill of Review Should Specify Errors Relied on.—A bill of review ought to specify with some degree of accuracy and definiteness the errors relied on.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 383.]

5. Appeal and Error (§ 172 (1)*)—Matters Not Mentioned in Bill of Review Not Considered.—On appeal from the dismissal of a bill of review, an assignment of error as to a matter not mentioned in the bill will not be considered.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 383.]

6. Equity (§ 464*)—No Relief on Bill of Review unless Errors Clear.—Where on bill of review, if the decree complained of should be reversed the parties could not be put in statu quo, the court will not grant relief unless the errors complained of are clear and have been specifically excepted to and pointed out in the original proceedings.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 383.]

7. Equity (§ 445*)—Infants May Impeach Decree Only on Same Ground as Adults.—While Code 1919, § 6316 (Code 1904, § 3335), extends the time within which infants may file a bill of review, it does not authorize them to attack decrees upon any grounds except those which would be available to adults.

Appeal from Circuit Court, Washington County.

Bill of review by Marie Powers and another, by next friend, against D. H. Howard, trustee, and others. From a decree dismissing the bill on demurrer, complainants appeal. Affirmed.

Oglesby & Burks, of Roanoke, for appellants.

Coleman & Carter, of Big Stone Gap, for appellees.

HINES, DIRECTOR GENERAL OF RAIL-
ROADS, *v.* GARRETT.

Sept. 22, 1921.

[108 S. E. 690.]

1. Appeal and Error (§ 994 (2)*)—Truth of Testimony for Jury.—In action by passenger wrongfully discharged beyond place of destination for damages for being raped while walking back, the court, on appeal from judgment for passenger, will not consider the questions of the passenger's veracity and the truth of her story as to being raped, but must treat the narrative as true; the veracity and the truth of her story being questions for the jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 619, 620.]

2. Carriers (§ 276 (3)*)—Evidence Held to Prove Rape of Passenger Discharged beyond Destination.—In action by passenger wrongfully

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.